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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/675,368
Filing Date: September 30, 2003
Appellant(s): MAYER, PAUL

Michael J. Cummings
(Reg. No. 46,650)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 20, 2008, appealing from the Office action

mailed September 20, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. There is no mention of the status of canceled claims 2 and 6, and the patent publication number provided for Carroll et al. was incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1 and 3-5.

Claims 1 and 3-4 are rejected under 35 U.S.C. 103 over Gagliardi et al., U.S. Patent No. 6,334,119 B1, in view of Carroll et al., U.S. Patent Application Publication No. US 2002/0083018 A1.

Claim 5 is rejected under 35 U.S.C. 103 over Gagliardi et al. in view of Carroll et al. in further view of McManus et al., U.S. Patent Application Publication No. US 2003/0101446 A1.

Claims 2 and 6 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct. To clarify, the after-final amendment, dated November 19, 2007, was entered.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows: Only claims 1 and 3-4 are rejected over the combination of only Gagliardi et al. and Carroll et al., not also claim 5. Also, an incorrect patent application publication number was provided for Carroll et al. The correct patent application publication number for Carroll et al. is US 2002/0083018 A1.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,334,119 B1	GAGLIARDI ET AL.	12-2001
2002/0083018 A1	CARROLL ET AL.	6-2002
2003/0101446 A1	MCMANUS ET AL.	5-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

9-1.   Claims 1 and 3-4 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Gagliardi et al., U.S. Patent No. 6,334,119 B1, in view of Carroll et al., U.S. Patent Application

Publication No. US 2002/0083018 A1.

As per **Claim 1**, Gagliardi et al. discloses:

- an inserter system (column 2, lines 26-53);

- a plurality of modules for accumulating and assembling sheets into mail pieces (column 3, line 10, through column 4, line 64; inserter system can have various modules which insert documents into envelopes to create mail pieces);

- a controller computer coupled to the plurality of modules and controlling assembly of mail pieces in accordance with predetermined instructions, the controller computer receiving status data from the plurality of modules (Figure 2; column 3, line 10, through column 4, line 64; column 7, line 13, through column 8, line 58; controller computer here would be the inserter control system 14 of Figure 2);

- the controller computer including software configured for processing the status data to determine inserter status and passing processed status data directly to transmittal using a network protocol (column 4, lines 43-53; column 7, line 13, through column 8, line 58; controller computer here would be the inserter control system 14 of Figure 2; inserter control system uses software to perform its functions; real-time transmittal would be direct; communication over a network would require some sort of network protocol; thus, network protocol is inherently disclosed);

- the controller computer further comprising a network port for directly transmitting status data using the network protocol to an external network (column 7, line 13, through column 8, line 58; controller computer here would be the inserter control system 14 of Figure 2; real-time transmittal would be direct; communication with a network would require some sort of

network port; thus, network port is inherently disclosed; OMS 100 is on an external network

relative to the inserter system 10 [see Figure 2]);

- the network port further configured for accepting incoming requests from the external

network using the network protocol (column 2, lines 41-53; column 7, line 13, through column 8,

line 58; claim 2; controller computer here would be the inserter control system 14 of Figure 2;

real-time transmittal would be direct; communication from a network would require some sort of

network port; thus, network port is inherently disclosed; OMS 100 is on an external network

relative to the inserter system 10 [see Figure 2]; communication over a network would require

some sort of network protocol; thus, network protocol is inherently disclosed);

- the controller computer configured for transmitting inserter status data in real-time,

without need for withdrawal of information from a database or repository in the controller

computer (column 7, line 13, through column 8, line 58; controller computer here would be the

inserter control system 14 of Figure 2);

- wherein the controller computer is configured so that selection of data for transmission

occurs in real-time, without need for withdrawal of information from a database or repository in

the controller computer (column 7, line 13, through column 8, line 58).

Gagliardi et al. fails to disclose using objects to perform computer functions. Carroll et

al. discloses using objects to perform computer functions (paragraphs [0023]-[0028]). It would

have been obvious to one of ordinary skill in the art at the time of applicant's invention to

modify the invention of Gagliardi et al. such that it uses objects to perform computer functions,

as disclosed by Carroll et al. Motivation is provided by Carroll et al. in that object-oriented

programming is more flexible than traditional programming languages (paragraphs [0023]-[0028]).

Gagliardi et al. fails to disclose wherein the network protocol is used to communicate with an HTTP web server and the network port is a TCP/IP port. Carroll et al. further discloses wherein the network protocol is used to communicate with an HTTP web server and the network port is a TCP/IP port (Figure 1; paragraph [0001]; paragraphs [0013]-[0017]; paragraphs [0023]-[0024]; TCP/IP is the standard for communication over the Internet, so a system that communicates over the Internet would have to have a TCP/IP port; communication between a web server and web browser implies the use of HTTP). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Gagliardi et al. as modified above in this rejection such that the network protocol is used to communicate with an HTTP web server and the network port is a TCP/IP port, as disclosed by Carroll et al. Motivation is provided by Carroll et al. in that Internet-browser-based systems allow greater access, more scalability, and lower cost (paragraph [0013]).

As per **Claim 3**, Gagliardi et al. and Carroll et al. fail to disclose wherein the controller computer is a general purpose computer coupled to the plurality of modules. However, that element/limitation was well-known to one of ordinary skill in the art at the time of applicant's invention. It would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify the invention of Gagliardi et al. as modified in the rejection for claim 1 such that the controller computer is a general purpose computer coupled to the plurality of modules, as was well-known to one of ordinary skill in the art at the time of applicant's invention.

Motivation is provided in that it was well-known to one of ordinary skill in the art at the time of

applicant's invention that general purpose computers can be used as a flexible means of

performing a variety of data processing tasks.

As per **Claim 4**, Gagliardi et al. and Carroll et al. fail to disclose wherein the controller

computer is an embedded processor fixed within the plurality of modules. However, that

element/limitation was well-known to one of ordinary skill in the art at the time of applicant's

invention. It would have been obvious to one of ordinary skill in the art at the time of applicant's

invention to modify the invention of Gagliardi et al. as modified in the rejection for claim 1 such

that the controller computer is an embedded processor fixed within the plurality of modules, as

was well-known to one of ordinary skill in the art at the time of applicant's invention.

Motivation is provided in that it was well-known to one of ordinary skill in the art at the time of

applicant's invention that a dedicated processor can be optimized for best performance of its

particular task.

9-2.   Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gagliardi et al. in

view of Carroll et al. in further view of McManus et al., U.S. Patent Application Publication No.

US 2003/0101446 A1.

As per **Claim 5**, Gagliardi et al. and Carroll et al. fail to disclose a parser configured to

select data for transmission responsive to an incoming request from the external network.

McManus et al. discloses a parser configured to select data for transmission responsive to an

incoming request from the external network (Figure 1; paragraphs [0012]-[0013]; paragraphs

[0021]-[0025]; a parser would have to be present since the request can be limited to the transfer

of only specified data). It would have been obvious to one of ordinary skill in the art at the time

of applicant's invention to modify the invention of Gagliardi et al. as modified in the rejection

for claim 1 such that it includes a parser configured to select data for transmission responsive to

an incoming request from the external network, as disclosed by McManus et al. Motivation is

provided by McManus et al. in that a user can then request specific data for download (Figure 1;

paragraphs [0012]-[0013]; paragraphs [0021]-[0025]).

(10) Response to Argument

10-1.   Applicant argues that the prior art rejections of the claims under 35 U.S.C. 103 are

inappropriate because Gagliardi et al. does not disclose the claimed features whereby the

networking features are directly embedded in the inserter controller computer. In support of this

argument, and more specifically, applicant argues that Gagliardi et al. fails to disclose the

element/limitation of "the controller computer further comprising a network port for directly

transmitting status data processed by the network protocol object to an external network, and the

network port and the network protocol object further configured for accepting incoming requests

from the external network, the controller computer configured for transmitting inserter status

data in real-time, without need for withdrawal of information from a database or repository in the

controller computer." Examiner had used a combination of two references to disclose this

element/limitation: Gagliardi et al. discloses "the controller computer further comprising a

network port for directly transmitting status data using the network protocol to an external

network," "the network port further configured for accepting incoming requests from the external

network using the network protocol," and "the controller computer configured for transmitting

inserter status data in real-time, without need for withdrawal of information from a database or

repository in the controller computer," while Carroll et al. discloses "using objects to perform

computer functions." Applicant first argues against that Examiner assertion by stating that

Gagliardi et al. does not include any networking port or protocol that provides for transmittal of

inserter status in real time and actually teaches away from such an arrangement. In support of

this argument, applicant quotes Gagliardi et al., column 8, lines 20-31, which states: "After the

inserter system 10 completes it's "mail run job", all the statistical data information (including the

aforesaid postal information) relating to that "mail run job" remains stored in memory in the

control system 14 of the inserter 10 (step 306). When a user of the OMS 100 desires to obtain

statistical data information from a chosen postal meter on one of the inserter systems 10 coupled

to the OMS 100 (FIG. 2), the user instructs the OMS 100 to send a signal to the control system

14 of the inserter system 10, via file server 102, having the chosen postage meter 104 or 106 to

transmit that statistical data regarding the chosen postage meter 104 or 106 to the OMS 100 (step

308)." From that passage, applicant concludes that Gagliardi et al. describes a system where

information is stored in memory, and the inserter must wait until an external query to provide the

information.

However, the above-quoted passage describes a different embodiment than does the next

paragraph of Gagliardi et al., column 8, lines 37-50, which describes an alternative embodiment,

by stating: "It is to be further appreciated that in addition to receiving postal data after an

inserter system 10 has completed its "mail run job", the OMS 100 may be operated to send postal

data to the OMS 100 on a real time basis. In other words, the ISC 14 sends postage meter

104,106 status information to the OMS 100 on a configured time interval. This allows the OMS

100 to obtain the latest register (e.g., ascending and descending) values of a postage meter

104,106, piece count information and etc., which information is sent to the OMS 100 on the

occurrence of specific events (i.e., mail run job end and job pause). Thus, the OMS 100 may

then be instructed to categorize this received postal data on predetermined parameters preferably

determined by the user of the OMS 100." The above passage literally describes that information

may be transmitted to the OMS of the user on a "real time basis." At first, this disclosure may

seem unclear because the sentence following mention of the term "real time basis" clarifies what

is meant by "real time basis" by stating that information is sent to the OMS of the user on a

configured time interval. The term "real time basis" implies immediate or "live" transfer of

information while transmitting information on a configured time interval implies the transfer of

information in batches, between which there is a time delay. The apparent inconsistency can be

explained by the fact that the term "real time basis" is somewhat of a misnomer. In general, the

information transfers that are commonly described as in "real time" are not received by the

recipient at exactly the same time as they are occurring -- there is a delay as the information

travels through the atmosphere, cable, or other carrier medium. For example, telephone

communication is typically considered in "real time" because there is typically no noticeable

delay between a first party's statement and the other party's response to that statement, as might

be expected if the transmission of information between the parties takes time. However, there IS

such a delay in telephone communication, it is just not NOTICED because the delay is so short

in duration. Likewise, the information of Gagliardi et al. can be transferred on a configured time

interval so short in duration that it is not noticed and appears to be immediate. This must be

what was intended by the language of Gagliardi et al. because, otherwise, the term "real time

basis" would not have been used. Therefore, Gagliardi et al. does indeed disclose the transfer of information in real time, and applicant's arguments are not persuasive with respect to this issue.

Applicant further argues that applicant's application also satisfies a long-standing need for real time transfer of information. However, such an assertion does not negate that Gagliardi et al. previously disclosed a real time transfer of information, as discussed above. Therefore, applicant's arguments are not persuasive with respect to this issue.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Nathan Erb/

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